

**ANNUAL REPORT FOR YEAR 2020
OF ATLANTIC HIGHLANDS UNIFIED
PLANNING BOARD/ZONING BOARD OF ADJUSTMENT¹**

Pursuant to N.J.S.A. 40:55D-70.1, the Zoning Board of Adjustment shall, at least once a year, review its decisions on applications and appeals for variances and prepare and adopt by Resolution a report of its findings on zoning ordinance provisions which were the subject of variance requests, and its recommendations for zoning ordinance amendment or revision, if any. The Zoning Board of Adjustment is required to send copies of the report and resolution to the Governing Body and Planning Board. Pursuant to N.J.S.A. 40:55D-25 the Planning Board of the Borough of Atlantic Highlands has been authorized to exercise, to the same extent and subject to the same restrictions, all the powers of the Zoning Board of Adjustment as a unified board. This report is intended to satisfy the foregoing provisions of the Municipal Land Use Law. The report of the Borough of Atlantic Highlands Unified Planning Board/Zoning Board of Adjustment is as follows:

The following is a listing of applications, including an identification of the Applicant’s property, nature of the application and disposition of the case.

<u>App.#</u>	<u>Block & Lot #</u>	<u>Street Address</u>	<u>Applicant/Relief</u>	<u>Zone District</u>
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PB 19-12	Bl. 107, Lot 7	11 West Lincoln Ave.	Muradi	R-2
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Site Plan w/ Use and Bulk Variances

The Applicant applied to the Planning Board of the Borough of Atlantic Highlands for use variance, bulk variance and preliminary and final major site plan approval to construct a 4-story, mixed-use commercial/residential building containing 2,688 sq. ft. of office/warehouse/storage on the first floor, 2,268 sq. ft. of warehouse/office on the second floor, a 2,756 sq. ft. 3-bedroom apartment on the third floor and a 2,756 sq. ft. 3-bedroom apartment on the fourth floor, contrary to the provisions of Chapter 150 Articles V, VIII & IX Sections 150-29, 150-85, 150-87 & 150-89 respectively of the Development Regulations of the Borough of Atlantic Highlands. The specific relief requested is as follows:

- A. Lot area of 6,750 sq. ft. where 10,000 sq. ft. are required (Section 150-29) (Exhibit 5-2) (Existing condition)
- B. Lot frontage of 50 ft. where 100 ft. are required (Section 150-29) (Exhibit 5-2) (Existing condition)
- C. Lot width of 50 ft. where 100 ft. are required (Section 150-29) (Exhibit 5-2) (Existing condition)

¹ DECEMBER 31, 2020

- D. Lot shape diameter of 50 ft. where 60 ft. are required (Section 150-29) (Exhibit 5-2) (Existing condition)
- E. Lot coverage of 82.8% where 75% is permitted (Section 150-29) (Exhibit 5-2) (95% Existing Condition)
- F. Height of 39.67 ft./four stories where 40 ft./three stories is permitted (Section 150-29) (Exhibit 5-2)
- G. Mixed-Use light industrial/business/residential use where mixed use with industrial component is not permitted in the CBD Zone District (Section 150-29) (Exhibit 5-4)

The Board found that the bulk variances were justified due to the undersized lot and its unusual shape of an elongated rectangle, and that most of the variances were pre-existing conditions. The Board favorably considered that all required parking was being accommodated on site. With respect to the use variance the Board agreed with the applicant’s planner that the commercial uses permitted in the zone are not suited to the subject property but that the proposed use can be developed on the property, has similarities to permitted uses in the zone, would promote the purposes of the MLUL and would blend with the surrounding neighborhood.

APPROVED

App.#	Block & Lot #	Street Address	Applicant/Relief	Zone District
PB19-14	Bl. 87, Lots 12 & 13	29 East Garfield Ave.	Monmouth Builders Minor Subdivision & Variance	R-1

The Applicant applied to the Planning Board for subdivision and variance approval to subdivide an existing 13,000 sq. ft. parcel containing an existing single family residence with detached garage and driveway into two (2) single family residential home lots which required subdivision approval along with the following variance relief:

Proposed lot 12:

1. Lot area of 6,500 sq. ft. where 7,500 sq. ft. are required (Section 150-29 A (II)) (Exhibit 5-2)
2. Lot frontage of 50 ft. where 75 ft. are required (Section 150-29 A (II))
3. Lot shape diameter of 30 ft. where 50 ft. are required (Section 150-29 A (II))
4. Front yard setback of 13.3 ft. (existing) where 20 ft. are required (Section 150-29 A (II))
5. Side yard setback of 7.9 ft. where 10 ft. are required (Section 150-29 A (II))
6. Combined side yard setback of 16.9 ft. where 20 ft. are required (Section 150-29 A (II))

7. Driveway setback of 1.4 ft. where 5 ft. are required (Section 150-54 (F))

Proposed lot 13:

1. Lot area of 6,500 sq. ft. where 7,500 sq. ft. are required (Section 150-29 A (II))
2. Lot frontage of 50 ft. where 75 ft. are required (Section 150-29 A (II))
3. Lot shape diameter of 30 ft. where 50 ft. are required (Section 150-29 A (II))

The Board found that the lots were created as part of a prior subdivision in the 1800's and that much of the surrounding neighborhood maintains that same smaller lot scheme. Therefore the requested variances would promote the purposes of the MLUL by providing for additional residential uses and permitting the creation of two lots consistent with the existing neighborhood scheme and zone plan.

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<u>App.#</u>	<u>Block & Lot #</u>	<u>Street Address</u>	<u>Applicant/Relief</u>	<u>Zone District</u>
PB20-01	Bl. 132, Lot 10	108 Bay Ave.	Tahamont/Tenney Bulk Variance	R-1

The Applicant applied to the Planning Board to construct a 5.5 ft. x 8 ft. mud room addition to the westerly side of an existing single family residential home resulting in a side yard setback of 6.6 ft. where 10 ft. is required contrary to the provisions of Chapter 150, Article V, Section 150-29 and Exhibit 5-2 of the Development Regulations of the Borough of Atlantic Highlands. The Planning Board noted that there is an existing landing that extends from the westerly side of the residence. The proposed new mud room will be approximately 1 ft. closer to the side setback than the existing landing. The Applicant testified that the new mud room will be a desirable amenity to the home to provide space for entry to the home especially during times of inclement weather. The Planning Board found that the proposed location of the mud room is the only practical location given the existing conditions of the property including that it is adjacent to the driveway area and enters at the kitchen. There were no alternative entry options to the rear of the house as there are no doors along the rear or opposite side of the residence for access and the proposed entryway is convenient to enter into the kitchen area

APPROVED

App.#	Block & Lot #	Street Address	Applicant/Relief	Zone District
PB 18-02	Bl. 74, Lot 8	58 Prospect Circle	Swanton Extension of Approval	R-2

The Applicant received variance approval to construct a second level to an existing residence along with a porch, cabana and other renovations that required variances including front yard setback of 21.0 ft. where 25.0 ft. are required (Section 150-29(A)(2), Exhibit 5-2), side yard setback of 10.5 ft. where 15 ft. are required (Section 150-29 (A)(2), Exhibit 5-2), impervious coverage of 45.1% (4,540 sq. ft.) where 40% is permitted (Section 150-29 (A)(2), Exhibit 5-2), building coverage of 18% (1,817 sq. ft.) where 15% is permitted (Section 150-29(A)(2), Exhibit 5-2), Lot coverage in steep slope areas of 4,540 sq. ft. where 3,911 sq. ft. are permitted (Section 150-78(E)(2)) and impervious surface coverage of 4,540 sq. ft. where 3,407 sq. ft. are permitted (Section 150-78 (E) (3)). The Applicant was delayed in commencing construction and requested an extension of the approval. The Board found that there were no changes to the zoning, the subject property or the surrounding neighborhood and the facts and circumstances upon which the approval was granted remained the same so that the extension should be granted.

APPROVED

App.#	Block & Lot #	Street Address	Applicant/Relief	Zone District
PB20-04	Bl. 8, Lots 36	24 Belvidere Road	Kett Bulk Variance	R-3

The Applicant applied for variance approval to demolish an existing single family home and to construct a new two story residential structure within the footprint of the existing structure requiring variances for minimum lot area of 22,939.75 sq. ft. (existing) where 30,000 sq. ft. is required, lot shape diameter of 43.5 ft. (existing) where 65 ft. is required, front yard setback of 9 ft. (existing) where 25 ft. is required and maximum lot coverage of steep slope area of 3,384 sq. ft. where 1,814 sq. ft. is permitted, contrary to the provisions of Chapter 150, Articles V & VII, Sections 150-29 & 150-78. The Planning Board found that, due to the various factors relating to the subject property including its unique shape, its location on the curvature of Belvidere Road and its steep slope topography, there is a hardship with respect to the property as the steep slope requires the structure to be placed close to Belvidere Road necessitating the front yard setback variance.

The other variances are triggered by the fact that the property is an undersized lot of record with an irregular shape. The Planning Board found that the Applicant exerted best efforts to protect the steep slope area by utilizing the existing foundation and by constructing a new home that is within the same footprint as the existing home so as to have the minimum disturbance and impact on the steep slope area.

APPROVED

App.#	Block & Lot #	Street Address	Applicant/Relief	Zone District
PB20-03	Bl. 37, Lot 16 & 17	144 – 146 Wesley Ave.	Evergreen/ Hoffman Minor Subdivision w/ Bulk variances	R-1

The Applicant applied for minor subdivision with bulk variances for lot area, frontage, lot shape diameter and building height. The hearing commenced but has not been concluded.

PENDING

App.#	Block & Lot #	Street Address	Applicant/Relief	Zone District
PB20-02	Bl. 97, Lot 17	44-48 first Ave.	Urban Mane Use Variance w/ Site Plan Waiver	HBD & R-1

The Applicant applied to the Planning Board for use variance approval to permit a portion of the first floor area of an existing building for a non-permitted personal service use (hair salon) contrary to the provisions of Chapter 150, Article V Sections 150-29.A(III) and Section 150-31 of the Development Regulations of the Borough of Atlantic Highlands. The Applicant also requested Minor Site Plan approval or a waiver from the required Minor Site Plan submission requirements insofar as the application did not involve any exterior improvements or work on the property. The Planning Board found that the proposed use will promote the purposes of the municipal land use law as set forth in N.J.S.A. 40:55D-2.a. and g. The Planning Board found that the type of service proposed will promote the public health and general welfare by providing the personal services which the Applicant proposes. The Planning Board found that this is an appropriate location for this type of commercial use in order to meet the needs of New Jersey citizens and particularly the needs of the residents of the Borough. The Planning Board found that approval of the application will assist in providing sufficient space in an appropriate location for the variety of uses contemplated in the statute.

The Planning Board also found that the grant of the requested variance will promote the goals and objectives of the master plan including expanding the choice of goods, services and employment available within the Borough including the promotion of employment opportunities within the Borough (Commerce, goals and objectives). The Planning Board also found that the grant of the requested variance will promote the principles, objectives and policies of the master plan including maintaining the present intensity of land use.

APPROVED

App.#	Block & Lot #	Street Address	Applicant/Relief	Zone District
PB20-07	Bl. 130&131 Lots 1&7	12 Harborview Drive	Hesse Bulk Variances	R-1

The Applicant applied to the Planning Board for variance approval to construct an above-ground swimming pool, outdoor kitchen, paver patio and sitting wall on the northern (rear) side of an existing home which required a setback variance to permit a setback from the mean high tide line of Sandy Hook Bay of 29.13 ft. where 50 ft. is required and 33.4 ft. exists, contrary to the provisions of Chapter 150, Article VII, Section 150-53 of the Development Regulations of the Borough of Atlantic Highlands. The Planning Board found that the existing residence is located in the central portion of the property which leaves only a minimal area to the rear of the residence between the existing structure and the 50 ft. mean high tide setback line. Thus, due to the location of the existing residence on the property it is difficult to place additional rear yard amenities anticipated for residences in the R-1 Zone District such as those proposed by the Applicant without encroaching into the mean high tide line setback from Sandy Hook Bay. Therefore, a hardship exists. The Planning Board noted that the amenities have been located principally outside the mean high tide setback line and it is only a portion of the patio and sitting wall that encroaches within the mean high tide line setback area. The Board found that the grant of the variance would not have any substantial adverse impacts on the neighborhood or the zone plan.

APPROVED

App.#	Block & Lot #	Street Address	Applicant/Relief	Zone District
PB20-05	Bl. 104, Lots 1& 2	Bayshore Plaza	DDJ Management(Dunkin Donuts) HB Site Plan w/Bulk Variances	

The Applicant applied to the Planning Board for preliminary and final major site plan approval with variances to permit the construction of a drive thru facility for the existing Dunkin Donuts establishment with associated driveway and parking improvements with variances to permit 217 parking spaces where 224 spaces are required and to permit a sign with an area of 2.75 sq. ft. where 2.0 sq. ft. are permitted. The application would also continue a number of existing non-conforming elements. Two new variances were required. The first is that the reconfiguration for the drive thru facility caused the loss of 2 parking spaces resulting in 217 spaces where 224 are required. The second was for one directional sign that will be 2.75 sq. ft. in area where 2.0 sq. ft. is permitted. The Board agreed with the Applicant's engineer, traffic engineer and planner that the proposed site plan will be an overall improvement to the property and that traffic and circulation issues were adequately addressed.

APPROVED

<u>App.#</u>	<u>Block & Lot #</u>	<u>Street Address</u>	<u>Applicant/Relief</u>	<u>Zone District</u>
PB20-09	Bl. 34, Lot 7	22 East Ave.	Bublitz Bulk Variance	R-1

The Applicant applied to the Planning Board for variance approval to construct a 723 sq. ft. addition to an existing single family home which has existing non-conforming elements of Lot area, Lot frontage, Lot width, Front yard setback and Accessory side yard setback. The aforesaid non-conforming elements will continue unchanged. In addition, the Applicant required a variance to permit building coverage 28.6% where 25% is permitted (Section 150-29)(A)(2)(Exhibit 5-2)). The Planning Board found that the building coverage variance is driven by the undersized nature of the lot. The Planning Board further found that the existing residence is very modest in size, being only 750 sq. ft. and that the proposed addition is being done in a manner that retains the "craftsman style" of the existing home and will continue to harmonize with the surrounding properties in the neighborhood. The Planning Board further found that the grant of the requested variance relief will not result in any substantial detriment to the public good as the proposed addition will meet all of the setback requirements of the Zone, will not be too close to any of the adjacent properties.

APPROVED

App.#	Block & Lot #	Street Address	Applicant/Relief	Zone District
PB20-08	Bl. 122, Lot 1	26 West Highland Ave.	P&C Realty Major Site Plan w/ Use, Conditional Use and Bulk Variances	CBD&R-1

The Applicant applied to the Planning Board for approval to construct a three-story mixed use residential and commercial building. The first floor will contain a 4,340 sq. ft. commercial retail space and 3,983 sq. ft. of accessory shared residential uses. The second and third floors will contain ten (10) one-bedroom dwelling units and eight (8) two-bedroom dwelling units with a rooftop activity area, which required variances for parking in a Zone where parking Lots are not permitted and twenty-eight (28) off-street parking spaces where fifty-six (56) off-street parking spaces are required. The Applicant also required variance relief for not providing a loading space for the commercial component along with bulk variance relief for Lot coverage of 76.1% where 75% is permitted, accessory side yard setback of 2 ft. where 5 ft. are required, rear yard setback of 2 ft. where 5 ft. are required, and impervious coverage of 77% where 50% is permitted, contrary to the provisions of Chapter 150, Articles V and IX, Sections 150-29 and 150-89, respectively of the Development Regulations of the Borough of Atlantic Highlands. The Planning Board found that, based the location of the subject property along First Avenue in the Central Business District, the proposed development will promote the general welfare by providing residential units consistent with the residential, recreational and commercial attributes of this area of the Municipality and provide sufficient space in an appropriate location for this mixed residential and commercial use. The Planning Board further found from the Architectural Plans provided by the Applicant that that proposed development will promote a desirable visual environment of good civic design and arrangement. The Planning Board agreed with the applicant's witnesses that the proposed mixed use development of this site with parking located in the residential zone promotes the purposes of the MLUL. It permits a benign parking use in the residential zone to support an attractive mixed use building in a zone in which it is permitted. The Planning Board agreed with the Applicant's witnesses that the grant of variance relief will promote the purposes of the MLUL by providing sufficient space in an appropriate location for a variety of uses, in this case mixed use development which meets the intent and purpose of the Borough Master

Plan to revitalize the First Avenue corridor. The Planning Board further found from the architectural elevation drawings and the site plan submitted that the proposed building and site development will provide a desirable visual environment and good civic design consistent with N.J.S.A. 40:55D-2.g.&i.

APPROVED

<u>App.#</u>	<u>Block & Lot #</u>	<u>Street Address</u>	<u>Applicant/Relief</u>	<u>Zone District</u>
PB 20-10	Bl. 133, Lot 9	96 Bay Ave..	Hrbek	R-1 Bulk Variance

The Applicant applied to the Planning Board for variance approval to construct a 461 sq. ft. addition to an existing single family residential home with an associated covered porch which required the following variances:

1. Front yard setback of 14.1 ft. where 20 ft. is required (Section 150-29)(A)(2)) (Exhibit 5-2) (Existing condition)
2. Side yard setback of 2 ft. where 10 ft. is required (Section 150-29)(A)(2)) (Exhibit 5-2) (Existing condition)
3. Combined side yard setback of 16.7 ft. where 20 ft. is required (Section 150-29)(A)(2)) (Exhibit 5-2) (New variance)
4. Lot area of 6,500 sq. ft. where 7,000 sq. ft. is required (Section 150-29)(A)(2)) (Exhibit 5-2) (Existing condition)
5. Lot frontage of 50 ft. where 75 ft. is required (Section 150-29)(A)(2)) (Exhibit 5-2) (Existing condition)
6. Lot shape diameter 30 ft. where 50 ft. is required (Section 150-29)(A)(2)) (Exhibit 5-2) (Existing condition)

The Board found that the existing residence is approximately 95 years old, has three bedrooms and a single bathroom and is small, outdated and has many elements which are not up to current code

standards. The Applicant desired to construct a 461 sq. ft. addition to the building in order to make it larger and more livable. The Applicant did not propose increasing the number of bedrooms. The Planning Board found that, with the exception of the combined side yard setback, all of the other nonconformities of the property are pre-existing conditions and will not be exacerbated by the proposed addition. Two conditions will require variance relief, combined side yard setback of 16.7 ft. where 20 ft. is required and 2 ft. side yard setback for the new second story that will be placed over the existing one-story portion of the building. The Planning Board found that, due to the elongated rectangular shape of the property, coupled with it being an undersized, narrow lot and the location of the existing building on the property, it is not possible to construct a reasonably sized addition to this residence without the requirement of variance relief. The Planning Board found that the only realistic location to place an addition to this small dwelling is where the Applicant proposed it.

APPROVED

<u>App.#</u>	<u>Block & Lot #</u>	<u>Street Address</u>	<u>Applicant/Relief</u>	<u>Zone District</u>
PB20-11	Bl. 28, Lot 26	124 East Washington Ave.	Finkelstein Minor Subdivision	R-1

The Applicant applied to the Planning Board for Minor subdivision approval to subdivide a parcel into two lots fully conforming to the Ordinance. It did not require any variances or design standard waivers. The Board found that this is a fully conforming “of right” subdivision.

APPROVED

<u>App.#</u>	<u>Block & Lot #</u>	<u>Street Address</u>	<u>Applicant/Relief</u>	<u>Zone District</u>
PB20-12	Bl. 96, Lot 3	46 Second Ave..	Pittenger Bulk Variance	HBD

The Applicant applied to the Planning Board for approval to construct a 14 ft. x 10 ft., 2.5 story addition to an existing 2.5 story single family home with a 256 sq. ft. roof deck requiring variances for:

1. Building coverage of 31.72% where 25% is permitted and 28.91% exists (Section 150-29(A)(II)(Exhibit 5-2))

2. Useable floor area ratio of 0.49 where 0.40 is permitted and 0.42 exists (Section 150-29 (A)(II)(Exhibit 5-2))

3. Combined side yard setback of 16.66 ft. where 20 ft. are required and 19.77 ft. exists (Section 150-29 (A)(II)(Exhibit 5-2))

The aforesaid new variances are in addition to the following existing non-conforming elements that will be continued:

1. Lot area of 5,000 sq. ft. where 7,500 sq. ft. is required (Section 150-29 (A)(II)(Exhibit 5-2))

2. Lot frontage and width of 50 ft. where 75 ft. is required (Section 150-29)(A)(2)(Exhibit 5-2)).

3. Lot shape diameter of 35 ft. where 50 ft. is required (Section 150-29)(A)(2)(Exhibit 5-2)).

4. Front yard setback of 12.12 ft. where 20 ft. is required Section 150-29)(A)(2)(Exhibit 5-2)).

5. Side yard setback of 4.57 ft. where 10 ft. is required (Section 150-29)(A)(2)(Exhibit 5-2)).

6. Accessory side yard setback of 4.6 ft. where 5 ft. is required (Section 150-29)(A)(2)(Exhibit 5-2)).

7. Accessory side yard setback of 1.34 ft. where 5 ft. is required (Section 150-29)(A)(2)(Exhibit 5-2)).

8. Impervious coverage of 66.9% where 50% is permitted (Section 150-29)(A)(2)(Exhibit 5-2)).

The Board found that the existing home is approximately 140 years old and that renovations are needed in order to enlarge the small interior rooms and hallways consistent with modern standards and to provide for a family room. The Board found that the subject property is an undersized interior lot with only 50 ft. of frontage where 75 ft. are required which results in a long, narrow lot which makes it difficult to provide additions without the requirement for variance relief. The Board found that the requested variances were reasonable and would not result in substantial detriment to the public good or substantial impairment of the zone plan.

APPROVED

App.#	Block & Lot #	Street Address	Applicant/Relief	Zone District
PB20-06	Bl. 8, Lot 33	100 East Garfield Ave.	Francioso Use (FAR) & Bulk Variances	R-1

The Applicant applied to the Planning Board for variance approval to construct a 14 ft. x 20 ft. (280 sq. ft.) addition to an existing single family residential home which requires the following variance relief:

1. Building coverage of 34.9% where 25% is permitted (Section 150-29)(A)(2)(Exhibit 5-2)).
2. Useable floor area ratio of 0.433 where 0.40 is permitted (Section 150-29)(A)(2)(Exhibit 5-2)).
3. Side yard setback of 2.4 ft. where 10 ft. is required (Section 150-29)(A)(2)(Exhibit 5-2)).
4. Combined side yard setback of 17.6 ft. where 20 ft. is required (Section 150-29)(A)(2)(Exhibit 5-2)).

The following existing non-conformities will continue:

1. Lot area of 5,250 sq. ft. where 7,500 sq. ft is required (Section 150-29)(A)(2)(Exhibit 5-2)).
2. Lot frontage and width of 50 ft. where 75 ft. is required (Section 150-29)(A)(2)(Exhibit 5-2)).
3. Lot shape diameter of 30 ft. where 50 ft. is required (Section 150-29)(A)(2)(Exhibit 5-2)).
4. Front yard setback of 3.9 ft. where 20 ft. is required (Section 150-29)(A)(2)(Exhibit 5-2)).
5. Accessory side yard setback of 2.5 ft. where 5 ft. is required (Section 150-29)(A)(2)(Exhibit 5-2)).
6. Impervious coverage of 66.9% where 50% is permitted (Section 150-29)(A)(2)(Exhibit 5-2)).
7. Driveway 0 ft. from side lot line where 5 ft. is required (Section 150-54)(F)).

The parcel is an existing undersized lot of record with the pre-existing non-conforming elements previously set forth. The Planning Board found that the Applicant satisfied the positive criteria for the grant of the requested variance relief. With respect to the side yard setback variance the Planning Board found that the subject property is an elongated rectangle in shape and is very narrow which makes it extremely difficult to comply with the side yard setback requirements both for one side and combined. In addition to the foregoing, there is an existing home and in order to place a reasonable addition on the home it will have to follow the existing building wall lines. The Board found that because of the narrowness of the property, coupled with the location of the structures lawfully existing thereon, a hardship exists as a reasonable addition cannot be placed on the property without the grant of variance relief. The Planning Board found that it is practical and appropriate to have the addition follow the existing building walls and the variances were appropriate..

APPROVED

<u>App.#</u>	<u>Block & Lot #</u>	<u>Street Address</u>	<u>Applicant/Relief</u>	<u>Zone District</u>
PB20-14	Bl. 117, Lots 1,2,3,4&5	65 First Ave.	T-Three, LLC	HBD/CBD

Major Site Plan w/ Variances

The Applicant has applied to the Planning Board for preliminary and final major site plan approval with variances to permit the construction of a four story mixed-use building with 1,420 sq. ft. of retail space on the first floor and a total of 15 two-bedroom residential units on the second (5 units), third (5 units) and fourth (5 units) floors along with (30) on-site parking spaces, concrete sidewalks, signs, lighting, storm drainage and utility connections requiring the following variance and design standard relief:

1. Section 150-29 (A)(2) (Exhibit 5-2) lot coverage in the CBD Zone of 99% where 75% is permitted.
2. Section 150-29 (A)(2) (Exhibit 5-2) building height in the CBD Zone of four stories where three stories are permitted and heights for roof 43.92 ft. where 40 ft. is permitted, parapet 49.33 ft. where 45 ft. is permitted, stair tower 54.5 ft. for where 50 ft. is permitted and elevator tower 59 ft. for where 55 ft. is permitted.
3. Section 150-29 (A)(2) (Exhibit 5-2) maximum building height in the HBD Zone of four stories where three stories are permitted and roof 43.92 ft. for where 40 ft. is permitted, parapet 49.33 ft. where 45 ft. is permitted, elevator tower 54.5 ft. and 59 ft. for where 55 ft. is permitted.
4. Section 150-87.A (1) open space of 12.8% where 30% is required.
5. Section 150-89.B(2) handicap parking stall dimensions of 12 ft. wide x 18 ft. long where 12 ft. wide x 20 ft. long is required.
6. Section 150-89.B(3)(c) parking aisle width of 23.79 ft. where 24 ft. is required to serve 90 degree oriented parking spaces.
7. Section 150-89.D(3) driveway access width of 47 ft. and 32.9 ft. respectively where 30 ft. is permitted.
8. Section 150-89(C)(1) no loading spaces are proposed where one loading space is required.
9. Section 150-85(E)(2)(a) no landscape buffer proposed where 25 ft. buffer is required; and

The subject property will also retain the following existing non-conforming elements:

1. Section 150-29 A (2)(Exhibit 5-2) lot area in CBD Zone of 5,772.15 sq. ft. where 10,000 sq. ft. is required (lots 2, 3, 4, & 5)
2. Section 150-29 A (2)(Exhibit 5-2) lot frontage in CBD Zone of 37 ft. where 100 ft. is required.
3. Section 150-29 A (2)(Exhibit 5-2) lot shape diameter for interior lot in CBD Zone of 35.5 ft. where 60 ft. is required.

The Board found that the proposed mixed use commercial/residential development is a permitted conditional use and meets the conditional use requirements. The Board further found that the property is a unique “L” shape with dual frontages on First Avenue and Center Avenue and “split-zoned” (HBD/CBD). These factors resulted in establishing the “hardship” positive criteria for the grant of variance relief. The Board also agreed with the Applicants Planner that the Borough Master Plan encourages a vibrant downtown in the area in which the subject property is located and that the proposed improvements will satisfy that goal of the master plan. The Board noted the efforts of the Applicant to positively address a variety of concerns expressed by Board Members and found that the grant of variance relief was appropriate.

APPROVED

App.#	Block & Lot #	Street Address	Applicant/Relief	Zone District
PB#20-15	Bl. 67, Lot 4	80 East Lincoln Ave.	West End KB, LLC Minor Subdivision	R-1

The Applicant applied to the Planning Board for approval to subdivide an existing 15,750 sq. ft. parcel into two new residential building lots. Proposed new lot 3.01 will have dimensions of 75 ft x 105 ft. with an area of 7,875 sq. ft. and proposed new lot 4.01 will have dimensions of 75 ft. x 105 ft. (lot area of 7,875 sq. ft.). Both lots will be fully conforming with the requirements of the R-1 Zone District in which the property is located and require no variances or design waivers. The application required minor subdivision approval. The Board found that the Applicant’s fully conforming plan was entitled to an “of-right” approval.

APPROVED

<u>App.#</u>	<u>Block & Lot #</u>	<u>Street Address</u>	<u>Applicant/Relief</u>	<u>Zone District</u>
PB#20-13	Bl. 97, Lot 28	31 Second Avenue	Niles Bulk Variance	R-1

The Applicant applied to the Planning Board for approval to construct a 461, sq. ft. deck with access stairs to the rear of an existing home. The property has existing nonconformities of lot area (5,000 sq. ft. where 7,500 sq. ft. is required), lot frontage and width (50 ft. where 75 ft. is required) and lot shape diameter (30 ft. where 50 ft. is required), side setback (3.9 ft. where 10 ft. is required) and combined side yards (17.9 ft. where 20 ft. is required). The improvements will extend the single and combined side yard setbacks. This application is scheduled for hearing on January 7, 2021.

PENDING

<u>App.#</u>	<u>Block & Lot #</u>	<u>Street Address</u>	<u>Applicant/Relief</u>	<u>Zone District</u>
PB#20-17	Bl. 6, Lot 2.05	351 Ocean Blvd.	Wood/King Bulk Variance	R-3

The Applicant applied to the Planning Board to construct a 232 sq. ft. addition to an existing home over the footprint of the current deck. The Applicant further proposed a 259 sq. ft. new deck on the northeast corner of the home. Finally, the Applicant proposed a 100 sq. ft. addition to enclose an area beneath an existing roof that connects the home to the detached garage. These improvements required variances for building coverage of 14.6% where 12% is permitted and impervious coverage of 31.3% where 30% is permitted. The subject property is an undersized lot of record having 23,043 sq. ft. of area where 30,000 sq. ft. is required. The Board found that the surrounding properties are similarly zoned and developed with single family residential homes and have similar lot areas. The Board agreed with the Applicant's Planner that the increased building and impervious coverages are very minor in nature and diminimis. The Board also agreed that the purposes of the Municipal Land Use Law will be promoted by granting these minor variances as the property will continue to provide adequate light, air and open space as none of the setback requirements are violated, nor is the floor area ratio. The house will be approximately 3,700 sq. ft. which is similar to, or smaller than, surrounding homes in the neighborhood. Thus, the grant of variances in this case will not constitute an over-building of the site and will result in a more efficient, better functioning residence with a desirable, aesthetic appearance.

APPROVED

<u>App.#</u>	<u>Block & Lot #</u>	<u>Street Address</u>	<u>Applicant/Relief</u>	<u>Zone District</u>
PB#20-18	Bl. 66, Lot 4	87 Memorial Parkway	Zlata/Clancy Bulk Variance	OR

The Applicant applied to the Planning Board to construct a 248 sq. ft. addition to a detached garage on a lot with existing nonconformities of Lot area, Lot frontage, Lot width, Lot shape diameter, Principal structure side setbacks (single and combined) and Accessory structure side setbacks (single and combined). The proposed addition requires variances to extend the Accessory side setbacks (single and combined) and exceed building height (16.17 ft. where 16 ft. is permitted). This application is scheduled for hearing on January 7, 2021.

PENDING

<u>App.#</u>	<u>Block & Lot #</u>	<u>Street Address</u>	<u>Applicant/Relief</u>	<u>Zone District</u>
PB#20-19	Bl. 9, Lot 5.03	254 East Highland	Jasontek/Zilincar Bulk Variance	R-3

The Applicant applied to the Planning Board to construct a 257.25 sq. ft. addition to an attached garage on a lot with existing nonconformities of deficient Lot area and Side setback. The addition requires a variance for building coverage of 13.2 percent where 12 percent is permitted. This application is scheduled for hearing on January 7, 2021.

PENDING

<u>ZONING ANALYSIS</u>	<u>2020</u>	<u>2019</u>	<u>2018</u>	<u>2017</u>
NUMBER OF APPLICATIONS	21	20	16	20
NUMBER GRANTED²	17	17	12	14
NUMBER DENIED	0	1³	0	1
NUMBER WITHDRAWN	0	2	2	1⁴
NUMBER STILL PENDING	4	0	2	4
<u>APPLICATIONS BY ZONE</u>				
NUMBER IN R-1 ZONE*	12	6	8	8
NUMBER IN R-2 ZONE	2	2	1	1

² It should be noted that the high approval rate is the result of the Planning Board taking an active role in working with Applicants during the hearing process to suggest revisions to plans to improve design, diminish the extent of, or remove, variances and mitigate impacts in order to transform an unapprovable application into an approvable one. In addition some subdivision and site plan applications may have been fully conforming to the zoning regulations and required to be approved per the **Pizzo Mantin** case. Finally, applications may have been requests for either extension of approval period or minor administrative changes to previously approved plans.

³ This application was “denied” / “dismissed” as the Planning Board determined that it did not have authority to grant the relief requested by the applicant.

⁴ Dismissed without prejudice for failure to prosecute application.

NUMBER IN R-3 ZONE	3	6	5	6
NUMBER IN HBD ZONE	3	2	0	3
NUMBER IN CBD ZONE*	2	3	3	3
NUMBER IN LI ZONE	0	0	0	0
NUMBER IN OR ZONE	1	1	0	0
NUMBER IN SC ZONE	0	0	0	0
NUMBER IN MF-2 ZONE	0	0	0	0
NUMBER IN HB ZONE	1	0	0	0
<u>RELIEF SOUGHT</u>	<u>2020</u>	<u>2019</u>	<u>2018</u>	<u>2017</u>
EXTENSION OF APPROVAL	1	2	1	1
APPEAL FROM ZONING OFFICER	0	0	0	0
MAJOR SUBDIVISION*	0	1	2	0
MAJOR SITE PLAN*	4	3	2	4
MINOR SUBDIVISION*	4	2	2	2
MINOR SITE PLAN*	0	0	1	2
SITE PLAN WAIVER*	1	0	0	1
CONDITIONAL USE*	1	0	0	0

USE VARIANCE *	3	6	5	3
BULK VARIANCE*	18	14	14	16
DEVIATION FROM CONDITIONS OF APPROVAL	0	1	0	0

***NOTE: APPLICATIONS MAY HAVE INVOLVED MULTIPLE RELIEF
RESULTING IN MORE ITEMS FOR RELIEF SOUGHT THAN APPLICATIONS**

<u>NATURE OF APPLICATION</u>	<u>2020</u>	<u>2019</u>	<u>2018</u>	<u>2017</u>
COMMERCIAL	5	5	2	6
MIXED COMMERCIAL/RESIDENTIAL	3	1	2	1
MULTI-FAMILY/HIGH DENSITY	0	1	0	0
SINGLE FAMILY RESIDENTIAL	16	13	12	13
NEW CONSTRUCTION	6	5	4	2
TEAR DOWN/REBUILD	2	3	2	0

ADDITION	11	6	5	8
APPEAL FROM ZONING OFFICER	0	0	0	0
INTERPRETATION OF ORDINANCE	0	0	0	0
CERTIFICATION NONCONFORMING USE	0	0	0	0

COMMENTS:

The number of applications increased by one (1) over 2019 and is consistent with prior years which had 20 in 2017 and 2019. This is the largest number of applications by the Planning Board since 2005-2006 when there were eighteen (18) applications each year. The economic recovery continues to be consistent notwithstanding the Covid-19 Pandemic. There was only one application for extension of a prior approval which is consistent with the past several years. The percentage of approvals is 100% of those cases concluded. This percentage is consistent with prior years. That the percentage of approvals remains high is in large part due to the boards interaction with applicants giving them feedback resulting in modifications to applications during the course of hearings resulting in their being approvable. It has also been due to a number of applications being submitted “of right” without the need for variances. That was the case with the Finkelstein and West End KB, LLC minor subdivision applications this year. A number of applications submitted required only diminimis new bulk variance approval for proposed improvements but had pre-existing nonconforming conditions. Several applications submitted were for residential home additions that required variance relief but maintained pre-existing nonconforming setbacks. In a number of cases the variances requested were minor (diminimis) in nature.

In 2020 the highest number of applications were for properties in the R-1 (57%) and R-3 (15%) zones. This percentage is a significant increase over prior years for the R-1 zone and a significant decrease under prior years in the R-3 zone. The R-2 zone at 10.0 % is consistent with prior years dating back to 2013 but is a substantial decrease from the 25% experienced in 2012. Applications in the HBD zone at 14% increased over 2018 and 2019, but is consistent with 2017 and 2016. It is still a significant decrease from the 25% in 2015 which was the highest in recent years. Nevertheless, this fluctuation is historically consistent with prior years. There were two applications (10%) in the CBD zone which is a decrease under the prior three years. There was one application in the OR zone and one application in the HB zone which is an increase over recent years. The

LI zone had no applications which is consistent with recent years. The SC zone had no applications which is consistent with recent years. The MF-2 zone had no applications which is consistent with recent years except 2016 when there were two applications for the same property. There continues to be interest in constructing new and improving existing residential homes, as well as in developing commercial properties in Atlantic Highlands. It appears that the level of activity has rebounded to the levels that preceded the recession which bottomed in 2009.

Bulk variances continue to be the most sought approvals and were a component in 86% of applications. This is somewhat higher than 2016 (60%) which was consistent with prior years and slightly higher than pre-2012 levels which hovered at 50%. It should be noted that no applications sought increased fence height which had been a significant percentage of variance requests in prior years. This may be responsive to the governing body's ordinance amendments respecting the calculation fence height which constituted a reaffirmation that it intends variances from the fence height limitations be given only sparingly and where substantial proofs have been submitted.

There were four major site plan applications, no minor site plan applications, one site plan waiver application, four minor subdivision applications and three use variance applications. This is a significant increase in minor subdivision applications and a significant reduction in use variance applications. Nevertheless the applications do not appear to reveal any particular trends or issues. There were no applications for major subdivision, no appeals from zoning officer decisions, one conditional use approval and no requests for deviation from conditions of approval. This is also consistent with prior years.

Single family home applications accounted for approximately 75% of all applications. Approximately 52% of those involved home additions. This is an increase over the past several years. (30% in 2019, 42% in 2018 and 40% in 2016) but is below 2017 (61.5%) and remains well below the 80% in 2014. Commercial applications at 23% was consistent with prior years which ranged between 20% and 33.3%..

There do not appear to have been any major trends experienced in 2020. Nor have there been a significant number of applications requesting relief from a specific ordinance provisions creating concern for the need to consider recommendations for changes due to their adverse impacts on properties. There have been applications that raised questions that may be considered for zoning ordinance amendments that are discussed below.

RECOMMENDATIONS FOR ZONING ORDINANCE AMENDMENT OR REVISION⁵

1. **Accessory Structures**. In 2016 one applicant with an in ground swimming pool wished to place a "cabana" for the pool to house pool equipment. The structure was in dimension similar to a shed structure. Therefore, the zoning officer classified it as a "shed". Section 150-54 permits accessory buildings (plural). It does not limit the number of accessory buildings, but limits the number of accessory sheds to one (1) per lot. In this case the property owner was required to seek variance approval for the "cabana" since it had the physical characteristics of a shed, even though it was not utilized as a shed. In 2017 an application was made to replace a prior accessory "Guest House" with an accessory "Pool House". Consideration may be given regarding clarifying what constitutes a "shed" as opposed to an "accessory building" , "cabana" or "pool house" and whether a limitation on the number of accessory structures other than sheds should be considered. Moreover, at present pool cabanas or similar accessory structures are not dealt with explicitly in the Ordinance. Consideration as to

⁵ Some recommendation are carried over from the 2019 annual report and some result from applications considered in 2020.

whether specific guidelines for these structures may be appropriate. This suggestion has been in several annual reports without action. The Planning Board may wish to eliminate further reference to it.

2. **Building Height.** In 2017 there was an application in a steep slope area for a residence that had four levels, two of which are below the finished grade of the front of the building. The first level below finished grade of the front of the building did not have more than half of its volume above the finished grade of the front of the building and therefore could not be classified as a “basement”. In addition, that level had more than half of its cubic volume above the average level of the adjoining ground and therefore could not be classified as a “cellar”. The second level below finished grade at the front of the building had similar characteristics. The ordinance definitions are difficult to reconcile for properties located in steep slope areas. Consideration should be given as to whether the definitions of “basement” and “cellar” should be revisited to provide clarity to their application and particularly to determine what is intended to constitute a “story” for purposes of determining the height of the building. During 2019 the Planning Board appointed a subcommittee to review and make recommendations as to how the Ordinance can be improved to remove any ambiguities in the Ordinance. Those recommendations were sent to the Governing Body for its consideration in 2020.

3. **Parking Requirements.** The Ordinance presently provides that in the HBD and CDB zones the off-street parking requirement may be satisfied in whole or in part by evidence that the required amount of parking has been or will be provided in public or privately operated lots available for the use of the general public.. Applications for development in these zones routinely provide no on-site/off-street parking and rely on Ordinance provisions permitting proximity to the municipal lot to meet their parking requirements. Although the Ordinance has been recently tightened the Planning Board continues to have concern as to the capacity of the existing lot to handle these parking needs. The Planning Board recommends that the Ordinance be revised to include an exhibit to graphically show the limits beyond which the Ordinance provision does not apply. The Planning Board further recommends that the Governing Body consider whether this public parking area is adequate to accommodate the parking that will be required by future development proposing limited or no on-site parking as well as the general public visiting the Borough to take advantage of its public, business, retail, commercial, service, restaurant and entertainment enterprises. This is noted as a priority in the Circulation Plan element of the recently adopted Master Plan.

4. **Steep Slopes.** The Planning Board has had a significant number of applications requesting relief from the steep slope limitations on impervious coverage and lot disturbance. The Planning Board has the following concerns that may justify consideration of Ordinance revisions:

- a. Applicants removing existing impervious coverage and contending that such areas, even though previously disturbed, should not be included as disturbed or impervious areas so that areas elsewhere may be disturbed for new development. (ie. removing a concrete patio on one side of a lot so that an addition can be constructed on the other side of the lot)
- b. Applicants have been requested by the Planning Board to provide geotechnical reports to demonstrate slope stability to support proposed construction on steep slope lots. Since these reports are not required as part of the submission checklist requirements Applicants express surprise when the materials are requested by the Planning Board during the course of a hearing which results in adjournments, delay in processing the application and additional unanticipated cost to the Applicant. Consideration may be appropriate to establishing Ordinance submission guidelines as to when such information, and what information, shall be required as part of the completeness review.

5. **Traffic Analysis.** The Planning Board has had several applications involving developments with the potential to generate significant traffic. Consideration should be given as to whether it is appropriate to require a traffic analysis to be required as a completeness requirement for applications exceeding a certain level of traffic generation.

6. **Ordinance Provisions Involved in Pending Litigation.** The Planning Board continues in litigation regarding the application for development of the McConnell Tract. Two ordinance sections were required to be interpreted by the Planning Board and the Court. They are Section 150-55 which exempts underground utilities and essential services from the conditional requirements of Section 150-36 under some circumstances and Section 150-84.A.(3) which requires lands in the floodway or identified as “V” Zones be preserved as undeveloped open space notwithstanding that the property in question has been previously developed. The Governing Body may want to provide clarity to those sections.

7. **Trash Disposal Containers.** During one application it was suggested that the Governing Body may wish to review the Zoning Ordinance with respect to regulations guiding the placement and appearance of trash storage containers and to develop an improved strategy to remove what may be considered to be “eyesores”.